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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/707,876	01/20/2004	Ray C. Torres	21488/04106	1875
24024	7590	07/21/2006	EXAMINER	
CALFEE HALTER & GRISWOLD, LLP			LE, HUYEN D	
800 SUPERIOR AVENUE			ART UNIT	
SUITE 1400			PAPER NUMBER	
CLEVELAND, OH 44114			3751	

DATE MAILED: 07/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/707,876

Applicant(s)

TORRES, RAY C.

Examiner

Huyen Le

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 May 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6, 8-17 and 21-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-17 and 21-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 3 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. Claim 3 recites the limitation "said tub" in 1. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-6, 8-11, 14-16, 21-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Grasso (3,620,404).

The Grasso reference discloses a system comprising: a bracket 20 including a plurality of fastener mating surfaces 36, each fastener mating surface 36 including a plurality of raised ridges 36a ; a panel 12 easily attachable to and detachable from the bracket 36, the panel 12, when attached, hiding the bracket 36 when viewed from the exterior; and clips 32 used to attach the panel 12 to the bracket 20 via engagement with

at least one raised ridge 36a of a corresponding fastener mating surface, enabling the panel 12 to be attachable to the bracket 20 in a selected position.

The introductory statement and all other functional statements of the intended use of the claimed system have been carefully considered but deemed not to impose any structural limitations on the claims distinguishable over the device of Grasso which is capable of being used in an access opening of tub skirt or a bathtub.

Regarding claims 2, 3, 14-15, the bathtub, tub skirt and access opening of the tub skirt are not considered parts of the combination of the invention, but rather intended use.

Regarding claim 4, the clips 32 are integrally formed with and extend from the back of the panel 12.

Regarding claims 5 and 23, the clips 32 include a straight portion 32a and an angled portion 32b.

Regarding claim 6, the angled portion 32b of the clip 32 includes a leading edge and a trailing edge together defining a V-shape.

Regarding claim 7, the mating surfaces (having teeth 36a) are tapered from the front of the bracket to the back of the bracket.

Regarding claim 9, the bracket 20 is a rectangular frame.

Regarding claim 10, the rectangular frame 20 includes at least one fastener mating surface 36 on at least two of its four sides.

Regarding claim 11, the clips 36 are detachable from the panel 12.

Regarding claim 24, each raised ridge 36a is capable of engaging the clip in a different selected position.

Regarding claim 25, the selected one of a plurality of positions is a position in which the panel 12 is spaced apart from the bracket 20.

6. Claims 1-6, 8-9, 12-16 are rejected under 35 U.S.C. 102(b) as being anticipated by JP 9-56623.

The JP 9-56623 reference discloses a tub skirt 5 comprising: face portion defining an access opening 11; a bracket 15 affixable to a tub skirt 5; a panel 24 (or 23) attachable to and detachable from the bracket 15, when attached the panel 24 (or 23) hiding the bracket 15 from viewing; and two clips 29 used to attached the panel 24 (or 23) to the bracket 15 via engagement with corresponding mating surfaces 19, 20 comprising a plurality of ridges 19a, 19b, 20a, 20b at one selected position.

Regarding claims 2 and 13, the shape of the bracket 17 is selected to be affixable around a periphery of the access opening.

Regarding claim 4, the clips 30 integrally are formed with and extend from the back of the panel 24 (or 23).

Regarding claim 5, the clips 30 include a straight portion and an angled portion as shown in Figures 8, 7, 11 .

Regarding claim 6, the angled portion of the clip includes a leading edge and a trailing edge together defining a V-shape (see Fig. 8).

Regarding claim 8, the mating surfaces 21 are tapered from the front of the bracket 15 to the back of the bracket 15 (looking from the side in Fig. 8).

Regarding claim 9, the bracket 15 is a rectangular frame.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over JP 9-56623 in view of JP 2000217729.

Although the JP 9-56623 reference does not disclose that the clips 30 (or 28) are detachable from the panel 24 (or 23), attention is directed to the JP 2000217729 which teaches clips 42 and 44 are detachably mounted to a panel 4.

It would have been obvious to one of ordinary skill in the art at the time the invention was made modify the clips 30 (or 28) of the JP 9-56623 panel so that they are detachably mounted to the panel in view of the teaching of the JP 2000217729 for facilitating replacement of the clips when the clips are broken or malfunctioned.

9. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over JP 9-56623 in view of Booth et al (US 2004/0216225)..

Although the JP 9-56623 reference does not disclose that the bracket is attached to the tub skid with an adhesive, attention is directed to the Booth et al reference which teaches a tub having a mounting bracket 6 attached to an access opening by glue or screw or other fastening means.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute a glue for the screws of the JP 9-56623 reference in view of the teaching of the Booth et al reference for attaching the bracket to an access opening of the tub skid, wherein so doing would amount a mere substitution of one functional equivalent fastening means for another within the same art that would work equally well in the JP 9-56623 system or device.

### ***Response to Arguments***

10. Applicant's arguments 05/12/06 with respect to claims 1, 12 and 21 have been considered but are moot in view of the new ground(s) of rejection.

11. Applicant's arguments filed 05/12/06 have been fully considered but they are not persuasive. Regarding applicant's arguments respect to JP '623 that the reference does not disclose the panel attachable in a selected one of a plurality of position and the outer cover 23/24 is attachable to the inner lid only in a single position, examiner disagrees with applicant. A single position of a cover 23/24 is still considered as one selected position. Therefore, claims 1 and 12 are still met by JP' 623.

### ***Conclusion***

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huyen Le whose telephone number is 571-272-4890. The examiner can normally be reached on Monday-Friday from 9:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Huyen Le



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Examiner  
Art Unit 3751

July 18, 2006